



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

IN RE WORLD TRADE CENTER LOWER  
MANHATTAN DISASTER SITE LITIGATION

**SUMMARY ORDER**  
**DISMISSING CASES**

21 MC 102 (AKH)

ALVIN K. HELLERSTEIN, U.S.D.J.:

On July 23, 2012, I heard oral argument on defendants' motion for summary judgment to dismiss certain cases. The motion is granted, subject to the conditions described below.

The first category of cases is made up of 31 plaintiffs, identified in Exhibit A. Plaintiffs failed to swear to their answers to court-ordered interrogatories by the much-extended, required date of December 2, 2012. These plaintiffs are in precisely the same situation as 170 other plaintiffs who failed to file such proper certifications, plaintiffs whom I dismissed by order of December 8, 2011. For the same reasons put forth in that order, I dismiss these 31 plaintiffs. Should these plaintiffs wish to move to open the judgment dismissing their cases, they must file proper motions by August 24, 2012 showing a ground provided by Rule 60(b), Fed. R. Civ. P. I shorten the time for filing such motions because of the several prior motions and extensions given to plaintiffs, and since it is necessary to coordinate discovery relative to all parties in order to avoid prejudice and delay.

The second category of cases is made up of those plaintiffs who, under oath, answered “None” to the court-ordered interrogatory asking “[f]or which diagnosed condition(s)/injury(s)/disease(s) does [Plaintiff] seek recovery?” Plaintiffs may not create an

issue of fact, after the filing of defendants' motion, by disputing prior sworn statements. Trans-Orient Marine Corp. v. Star Trading & Marine, Inc., 925 F.2d 566, 572 (2d Cir. 1991). Nor are claims for "medical monitoring" or fear of cancer stand-alone causes of action if there is no "clinically-demonstrable presence of a toxin in the plaintiff's body, or some other indication of a toxin-induced disease." DiStefano v. Nabisco, Inc., 2 A.D.3d 484, 485 (N.Y. App. Div. 2d Dep't 2003); Abusio v. Consolidated Edison Co., 238 A.D.2d 454 (N.Y. App. Div. 2d Dep't 1997). Defendants shall settle an order identifying the plaintiffs affected by this order, and both sides shall submit same by August 8, 2012.

The clerk shall close the docket numbers identified in Exhibit A.

SO ORDERED

Dated: July 25, 2012  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge

*Exhibit A*

#	Last	First	Docket	Counsel
1	Acevedo	Carmelo	07cv01453	Worby Groner Edelman & Napoli Bern
2	Agudo	Claudio	07cv04447	Worby Groner Edelman & Napoli Bern
3	Alloggio	Anthony	07CV04240	Worby Groner Edelman & Napoli Bern
4	Bunay	Carlos	07CV01571	Worby Groner Edelman & Napoli Bern
5	Colucci	John	07cv01485	Worby Groner Edelman & Napoli Bern
6	Concepcion	Beatriz	07CV01594	Worby Groner Edelman & Napoli Bern
7	Daquila	Steven	06cv08756	Worby Groner Edelman & Napoli Bern
8	Datil	Leonor	07cv01488	Worby Groner Edelman & Napoli Bern
9	DeLuccy	Louis	07CV05285	Worby Groner Edelman & Napoli Bern
10	Eramo	Joseph	06cv14632	Worby Groner Edelman & Napoli Bern
11	Fairweather	Robert	07CV05408	Worby Groner Edelman & Napoli Bern
12	Ferraro	Kenneth	06CV12062	Worby Groner Edelman & Napoli Bern
13	Hernandez	Maria Cecilia	08cv05156	Worby Groner Edelman & Napoli Bern
14	Higgins	James	07CV05395	Worby Groner Edelman & Napoli Bern
15	Johnson	Charles	07CV05558	Worby Groner Edelman & Napoli Bern
16	Kelly	Egerton	06cv13971	Worby Groner Edelman & Napoli Bern
17	Lombardi	John	05CV01678	Worby Groner Edelman & Napoli Bern
18	McPartland	Michael	05CV01181	Worby Groner Edelman & Napoli Bern
19	Mesa	Luis	07CV05303	Worby Groner Edelman & Napoli Bern
20	Orellana	Aurelio	07CV01674	Worby Groner Edelman & Napoli Bern
21	Pena	Luis	05cv10741	Worby Groner Edelman & Napoli Bern
22	Schmidt	Robert	06cv10878	Worby Groner Edelman & Napoli Bern
23	Tedaldi	Guy	07CV05430	Worby Groner Edelman & Napoli Bern
24	Torres	Javier	08CV02725	Worby Groner Edelman & Napoli Bern
25	Tucker	Jerome	07CV05323	Worby Groner Edelman & Napoli Bern
26	Vanbelle	Mark	06cv11281	Worby Groner Edelman & Napoli Bern
27	Vario	Thomas	05CV01347	Worby Groner Edelman & Napoli Bern
28	Vasquez	Camilo	08CV02313	Worby Groner Edelman & Napoli Bern
29	Vivar	Luis	07cv04523	Worby Groner Edelman & Napoli Bern
30	Wragg	Clarence	06cv08125	Worby Groner Edelman & Napoli Bern
31	Yaguana	Aquiles	07cv04525	Worby Groner Edelman & Napoli Bern